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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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In re A. R., a Person Coming Under the Juvenile  
Court Law.

C095116

SACRAMENTO COUNTY DEPARTMENT OF  
CHILD, FAMILY AND ADULT SERVICES,

(Super. Ct. No. JD238199)

Plaintiff and Respondent,

v.

W. R.,

Defendant and Appellant.

Appellant W. R., mother of the minor, appeals from the juvenile court's orders terminating parental rights and freeing the minor for adoption. (Welf. & Inst. Code,<sup>1</sup> §§ 366.26, 395.) Appellant argues that the orders must be reversed and remanded because the Sacramento County Department of Child, Family and Adult Services (Department) did not comply with the notice requirements of the Indian Child Welfare

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<sup>1</sup> Further undesignated section references are to the Welfare and Institutions Code.

Act (ICWA) (25 U.S.C. § 1901 et seq.). The Department conceded the ICWA error and the need for a limited remand for ICWA compliance. We agree.

The ICWA protects the interests of Indian children and promotes the stability and security of Indian tribes by establishing minimum standards for, and permitting tribal participation in, dependency actions. (25 U.S.C. §§ 1901, 1902, 1903(1), 1911(c), 1912; *In re Levi U.* (2000) 78 Cal.App.4th 191, 195-196.) The juvenile court and the Department have “an affirmative and continuing duty to inquire” whether a child is, or may be, an Indian child. (§ 224.2, subd. (a); Cal. Rules of Court,<sup>2</sup> rule 5.481.) If the court “knows or has reason to know that an Indian child is involved,” notice of the pending proceeding and the right to intervene must be sent to the tribe or the Bureau of Indian Affairs if the tribal affiliation is not known. (§ 224.3; see rule 5.481(b); 25 U.S.C. § 1912.) The ICWA notice must include all of the following information, if known: the child’s name, birthplace, and birth date; the name of the tribe in which the child is enrolled or may be eligible for membership; names and addresses (including former addresses) of the child’s parents, grandparents, and great-grandparents, and other identifying information; and a copy of the dependency petition. (§ 224.3, subd. (a)(5)(A)-(H); *In re D.W.* (2011) 193 Cal.App.4th 413, 417; *In re Mary G.* (2007) 151 Cal.App.4th 184, 209.) Failure to comply with the notice provisions and determine whether the ICWA applies is error. (*In re Kahlen W.* (1991) 233 Cal.App.3d 1414, 1424; *In re Desiree F.* (2000) 83 Cal.App.4th 460, 472.)

Here, mother stated she did not know if she had Indian ancestry. Father claimed Blackfoot Native American ancestry. Yet, no inquiry was made of either the maternal or paternal grandparents or any other of parents’ relatives. And the notice provided to the Blackfeet tribe did not contain the names of any maternal relatives, even though some of

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<sup>2</sup> Further rule references are to the California Rules of Court.

that information was readily available to the Department.<sup>3</sup> The Blackfeet tribe responded to the notices stating the minor was not eligible for enrollment and was not an Indian child. Thereafter, the juvenile court found the ICWA did not apply.

As the Department concedes in its letter brief and statement of nonopposition at pages 1 and 2: Prior to the juvenile court's finding that the ICWA did not apply, "the Department failed to conduct an appropriate further inquiry into the father's claim of Blackfeet Native American ancestry by neglecting to inquire of native ancestry of any maternal or paternal relatives aside from the parents themselves. In addition, the Department failed to include the names or identifying information of any extended relatives beyond the father and mother to the Blackfeet tribe when the Department provided the tribe with notice in the form of the ICWA-030."

Accordingly, we must remand the case to the juvenile court for further proceedings to address compliance with the inquiry and notice provisions of the ICWA.

We are also compelled to note the propriety of a joint application/stipulation for reversal under the circumstances seen here. The sole claim of error in mother's opening brief was the failed ICWA inquiry and notice, a claim conceded by the Department. A stipulation would have permitted this court to issue the remittitur forthwith, in accordance with the strong policy preference for prompt resolution of dependency matters. (See rule 8.272(c)(1).)

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<sup>3</sup> Although father reported Blackfoot ancestry, notice was sent to the Blackfeet tribe. "[T]here is frequently confusion between the Blackfeet tribe, which is federally recognized, and the related Blackfoot tribe, which is found in Canada and thus not entitled to notice of dependency proceedings. When Blackfoot heritage is claimed, part of the Agency's duty of inquiry is to clarify whether the parent is actually claiming Blackfoot or Blackfeet heritage." (*In re L.S.* (2014) 230 Cal.App.4th 1183, 1198.)

## DISPOSITION

The orders terminating parental rights are conditionally affirmed subject to full compliance with the ICWA as described in this opinion. If, on remand, the juvenile court determines the ICWA applies, the court shall vacate its previous orders terminating parental rights and conduct further proceedings consistent with the ICWA, including a new section 366.26 hearing. (25 U.S.C. § 1914; § 224, subd. (e).)

/s/  
Robie, Acting P. J.

We concur:

/s/  
Duarte, J.

/s/  
Krause, J.